

MOISE AND LEON BERGER

IBLA 84-388

Decided August 28, 1984

Appeal from the decision of the Arizona State Office, Bureau of Land Management declaring certain lode mining claims null and void. A MC 214235 through A MC 214243.

Affirmed in part; reversed in part.

1. Mining Claims: Lands Subject to -- Patents of Public Lands:
Reservations -- Railroad Grant Lands

Where lands were patented to a railroad under a statute which authorized the granting of non-mineral lands only, the issuance of the patent generally constituted a conclusive determination by the United States of the nonmineral character of the land so patented, and the subsequent discovery of mineral values thereon does not operate to void the conveyance by the United States. Where such land has been reconveyed to the United States subject to a reservation of all minerals to the private grantor, the land is not subject to the subsequent location of mining claims under the general mining laws.

2. Mining Claims: Lands Subject to -- Mining Claims: Location --
Mining Claims: Lode Claims

Lode mining claims located entirely on lands which are not subject to mineral entry at the time of their location are properly declared null and void ab initio without a hearing. However, where lode claims are partially located on land which is then not subject to mineral entry, they may not summarily be declared null and void ab initio to the extent of those portions of the claims which embrace lands not available to mineral entry, as lode claims may be projected onto such lands in order to configure the claim boundaries so as to secure extralateral rights.

APPEARANCES: Leo Crowley, Esq., Flagstaff, Arizona, for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Moise and Leon Berger, as trustees of the Jeanne Berger Revocable Trust, have appealed from the decision dated February 16, 1984, by which the Arizona State Office of the Bureau of Land Management (BLM) declared the Gold Standard lode mining claims #7 through #15 to be null and void in whole or in part. That decision states:

The Bureau of Land Management public records show the lands were not open to location of mining claims at the time of their location. Therefore, the Gold Standard #7 through #11 are hereby declared null and void ab initio in part and the Gold Standard #12 through #15 are declared null and void ab initio in their entirety.

In their statement of reasons for appeal, appellants offer the following factual analysis and argument:

The reasons for this appeal are that the land in question was conveyed to the Santa Fe Pacific Railroad Company on October 16, 1924 or September 18, 1922 pursuant to an Act of Congress approved July 27, 1886 (14 Stat. 292) entitled an Act Granting Land to Aid in the Construction of Railroad and Telegraph Lines from the States of Missouri and Arkansas to the Pacific Coast. Pursuant to Section 3 of that Act, all mineral lands are excluded from the operations of the Act.

In 1947 and 1948, the surface land was reconveyed to the United States Government by Ellsworth Brown and Goldie Brown. However, in the transfers from the Railroad to the Browns and subsequently back to the United States, the Railroad purported to keep the mineral interest. For that reason, the claims were declared void.

The land in question was mineral in character and known to be such prior to the turn of the century. The Gold Standard Claims #1, #2 and #3, not part of this filing, were staked by the Berger family in 1915 and have been held continuously by them from that date to the present. The Berger family worked the property prior to that date. This matter was litigated in the Arizona Courts resulting in the Arizona Supreme Court opinion of Rogers v. Berger, 103 P.2d 266 (1940).

It is the Appellants' position that since mineral land was to be excluded from transfers to the Railroad that the transfer was void, and the Appellants are in the process of requesting Santa Fe Railroad to reconvey the mineral interest to the United States Government. Santa Fe's response will be forwarded as soon as it is obtained.

The Board finds no need to await the anticipated action by the Santa Fe Railroad, because even if Santa Fe conveys the mineral estate in fee to

appellants they will not operate on the basis of claims located under the General Mining Law, and if Santa Fe declines or, alternatively, relinquishes its title to the United States, the claims still are affected by the circumstance of having been located at a time when the mineral title was privately owned.

[1] Appellants' contention that the grant to railroad is a nullity because mineral lands were to be excluded from such grants has been considered and rejected many times by the courts and this Department. The rule is that, absent fraud, the issuance of the patent to the railroad operates as a conclusive determination by the United States of the nonmineral character of the land so patented, and the subsequent discovery or identification of mineral values thereon does not operate to void the conveyance or create a reservation of the minerals to the United States. See Burke v. Southern Pacific R.R., 234 U.S. 669 (1914); Barden v. Northern Pacific Railroad, 154 U.S. 288 (1894); Joseph A. Barnes, 78 IBLA 46 (1983) (appeal pending); Diane B. Katz, 48 IBLA 118 (1980); Northern Pacific Railway, 32 L.D. 342 (1903); See also Diamond Coal and Coke Co. v. United States 233 U.S. 236 (1914); George Antunovich, 76 IBLA 301, 90 I.D. 464 (1983).

Moreover, the Supreme Court has held that even where the patent may be voidable, it cannot be successfully attacked by strangers who had no interest in the land at the time the patent was issued and were not prejudiced by the issuance of patent. Burke v. Southern Pacific R.R., supra. Appellants would appear to fall into this class.

Accordingly, those claims which were located entirely on lands originally patented to Santa Fe, and in which Santa Fe still owns the mineral estate, specifically the Gold Standard #12 through #15 claims, were properly held by BLM to be null and void.

[2] However, as to the Gold Standard #7 through #11 lode mining claims, it appears that these claims are only partially projected into lands which are unavailable for location under the mining law. It has long been held that where a lode location is based upon a discovery of a mineral deposit on land which is open to mineral entry, the mining claimant may extend or project the claim boundaries onto adjacent patented, withdrawn or acquired land in order to configure the claim boundaries so as to obtain, in appropriate circumstances, the extralateral rights to the deposit. Therefore, this Board has held in a number of recent opinions that BLM should not declare null and void those portions of lode claims which extend or are projected onto lands not subject to mineral entry without a factual determination that the apex of the lode purportedly discovered is not situated within the available portion of the claim. Such a determination may only be made within the context of a contest proceeding conducted in accordance with the rules governing due process. Marvin F. Johnston, 81 IBLA 295 (1984); Marilyn Dutton Hansen, 79 IBLA 214 (1984); Santa Fe Mining, Inc., 79 IBLA 48 (1984); Zula C. Brinkerhoff, 75 IBLA 179 (1983); and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, the decision appealed from is

affirmed as to its holding with regard to the invalidity of the Gold Standard lode mining claims #12 through #15, and reversed as to its holding regarding the partial invalidity of the Gold Standard lode mining claims #7 through #11.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

R. W. Mullen
Administrative Judge.

